

CIVIL ACTION
NO. 05 10307 JLT

MOTION OF DEFENDANTS FOR LEAVE TO FILE
THIRD-PARTY COMPLAINT AGAINST MUOI BUI a/k/a MUOI PHAM,
ADMINISTRATRIX OF THE ESTATE OF TOAN BUI
d/b/a BLESS HARDWOODS

As reason therefor the defendants state that this is a subrogation claim for property damage arising out of fire that occurred at 4 Foscett Street, Somerville, MA in September of 2004. The plaintiff in this lawsuit, the homeowner's insurance carrier for the owners of the property, has filed suit against the defendants alleging that they negligently performed floor refinishing work at the property causing the fire. The defendant deny the allegations.

The floor refinishing work was performed by Toan Bui d/b/a Bless Hardwoods. Toan Bui was hired by David's Floor Service Inc. to perform the work at 4 Foskett Street. It is the position of the defendants that if the plaintiff is successful at trial, they would be entitled to indemnification or contribution from Toan Bui's estate.

Counsel for the defendants has recently learned that there is a policy of liability insurance which may be available for Toan Bui d/b/a Bless Hardwoods. As there appears to be insurance monies available to satisfy a judgment, the defendants request leave to file a third-party action rather than file a separate action at the conclusion of this litigation. It is in the interests of judicial economy to allow a third-party action to proceed at this time.

WHEREFOR the defendants request leave to file a third-party action against the Muoi Bui a/k/a Muoi Pham as Administratrix of the Estate of Toan Bui d/b/a Bless Hardwood. A proposed third-party complaint is attached as Exhibit A.

Date: December 5, 2005

Defendants,
By their attorney,



Susan Johnson Bowen
BBO#561543
Warren, Hensley & Bowen LLP
185 Devonshire Street, Suite 1000
Boston, MA 02110
(617) 542-4130

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing document on the parties to this case by mailing a copy hereof, postage prepaid, to Patrick J. Loftus, Esq., LAW OFFICE OF PATRICK J. LOFTUS, No. 9 Park Street, Suite 500, Boston, MA 02108 and James, P Cullen, Jr., Esq., COZEN O'CONNOR, 1900 Market Street, The Atrium-Third Floor, Philadelphia, PA 19103 and to Bart Warner, Esq., 113 Union Wharf East, Boston, MA 02109 as counsel of record for Muoi Bui a/k/a Muoi Pham, as Administratrix of the Estate of Toan Bui in Middlesex Superior Court C.A. No. 2005-00040 on November 22, 2005 and on December 5, 2005.



Susan Johnson Bowen

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION
NO. 05 10307 JLT

VERMONT MUTUAL INSURANCE COMPANY)
as subrogee of TIMOTHY D. STEIN and)
WAYNE ROLF)
Plaintiff,)
v.)
DAVID'S FLOOR SERVICE, INC.)
and)
MIN DANG, d/b/a)
DAVID'S FLOOR SERVICE,)
Defendants)
Third-Party Plaintiffs)
v.)
MUOI BUI a/k/a MUOI PHAM,)
AS ADMINISTRATRIX OF)
THE ESTATE OF TOAN BUI)
d/b/a/ BLESS HARDWOODS)
Third-Party Defendants)

THIRD-PARTY COMPLAINT

Pursuant to F.R.C.P. 14(a), the defendants/third-party plaintiffs hereby asserts the following claims against the third-party defendant, Muoi Bui, a/k/a Muoi Pham, as Administratrix of the Estate of Toan Bui d/b/a Bless Hardwoods.

1. David's Floor Service Inc. is a Massachusetts corporation with a principal place of business in Somerville, Massachusetts.

2. Upon information and belief, Toan Bui was an individual residing in Dorchester, MA doing business as Bless Hardwoods. Muoi Bui, a/k/a Muoi Pham is the duly appointed administratrix of the estate of Toan Bui.

3. At all times relevant hereto, David's Floor Service Inc. hired Toan Bui d/b/a Bless Hardwoods to perform floor refinishing work, including the sanding and refinishing of hardwood floors.

4. At all times relevant hereto, Toan Bui d/b/a Bless Hardwoods would supply his own materials and equipment for the jobs he was hired to perform.

5. At all times relevant hereto, Toan Bui d/b/a Bless Hardwoods would hire and pay his crew of workers.

6. In August or September of 2004, David's Floor Service Inc. hired Toan Bui d/b/a Bless Hardwoods to perform floor refinishing work at the home owned by Timothy D. Stein and Wayne Rolf Fette at 4 Foskett Street Somerville, MA.

7. On September 4, 2004, while Toan Bui d/b/a Bless Hardwoods was working at 4 Foskett Street, a fire occurred at the building.

8. Vermont Mutual Fire Insurance Company a/s/o Timothy Stein and Wayne Rolf brought suit against David's Floor Service Inc. and Minh Dang d/b/a David's Floor Service alleging that the defendants negligently performed floor refinishing work at 4 Foskett Street

causing the fire and property damage. A copy of the complaint is attached.

9. If the allegations in the complaint are found to be true, which the defendants/third-party plaintiffs deny, the third-party defendant is liable to the defendants/third-party plaintiffs for indemnity and contribution.

COUNT I

10. The defendants/third-party plaintiffs incorporate by reference the allegations in the preceding paragraphs.

11. If the plaintiff recovers against the defendants/third-party plaintiffs in this action, then the negligent conduct of Toan Bui d/b/a Bless Hardwoods was the sole and proximate cause of the plaintiff's damages. Therefore any liability of the defendants/third-party plaintiffs is derivative and imposed solely by reason of the conduct of Toan Bui d/b/a Bless Hardwoods or his agents.

12. If the plaintiff recovers judgment against the defendants/third-party plaintiffs, they are entitled to indemnification from the estate of Toan Bui d/b/a Bless Hardwoods.

WHEREFOR, the defendants/third-party plaintiffs are entitled to recover from the estate of Toan Bui d/b/a Bless Hardwoods under their common law right to indemnity

the full amount of any adverse judgment, as well as their reasonable costs and attorneys' fees.

COUNT II

13. The defendants/third-party plaintiffs incorporate by reference the allegations in the preceding paragraphs.

14. If the allegations in the complaint are true, which the defendants/third-party plaintiffs deny, then the plaintiff's damages were due in whole or in part to the conduct of Toan Bui d/b/a Bless Hardwoods or its agents.

15. If the plaintiff recovers judgment against the defendants/third-party plaintiffs on the claims asserted in the complaint, they are entitled to contribution from the estate of Toan Bui d/b/a Bless Hardwoods.

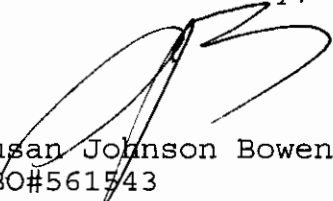
WHEREFOR in the event of any adverse judgment, finding or verdict against the defendants/third-party plaintiffs, they are entitled to contribution from the estate of Toan Bui d/b/a Bless Hardwoods pursuant to M.G.L. c .231B.

JURY CLAIM

The defendants/third-party plaintiffs demand a trial by jury as to all claims and issues.

Date: December 5, 2005


Defendants/Third-Party Plaintiffs,
By their attorney,



Susan Johnson Bowen
BBO#561543
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Susan Johnson Bowen